# Wake Forest Jurist

Fall, 1976 Vol. 7, No. 1

*1956*

# WAKE FOREST JURIST

Vol. 7, No. 1 Fall, 1976

## TABLE OF CONTENTS



## BOARD OF EDITORS



## STATEMENT OF PURPOSE AND POLICY

The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the *Jurist* seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide a forum for the creative talents of students, faculty and alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

# A MESSAGE FROM THE DEAN

It was a great pleasure to welcome the large number of alumni who came to Law Homecoming on October 8 and 9. The Partners' Banquet, the lectures by Howard Oleck and Mal Osborn, and the reception and dinner dance at Bermuda Run were all lively and well-attended events. Opinion is divided as to whether the highlight of the weekend was Irving Younger's speech at the Partners' Banquet or Wake Forest's victory over Clemson at Groves Stadium. Indeed, there is a third view which holds that the *real* highlight was the unscheduled party at the Sheraton on Saturday night. Although these divergent views may never be reconciled, no one has dissented from the conclusion that Law Homecoming was a truly enjoyable occasion. I'm already looking forward to next year.

Elsewhere in this issue is a feature about the annual Law Fund campaign, which raised $206,000 last year in support of the School of Law. This was accomplished with 27.4% of our alumni participating. This year, the Lawyers' Alumni Association has set as a goal participation in the Law Fund by at least 35% of the School's alumni. This would seem to be a realistic goal, and I believe we will attain it. I think it needs to be emphasized, and I hope all our alumni understand, that all gifts made to the Law Fund are used to meet current expenses of the School of Law. Thus the Law Fund helps the School to maintain quality and to grow stronger year by year despite the escalating cost of providing first-rate legal education. To all those whose contributions to the Fund make this possible, I wish to express my profound gratitude.

I take this means of alerting alumni that the annual Law Day Banquet will take place on Saturday, April 2. An unusual and very special program is in the works, and you will receive information about this in due course. Meanwhile, I hope you will mark your calendars and plan to attend.

Pasco Bowman

# THE EDITOR'S PAGE

Well over one hundred years of service to Wake Forest School of Law is represented by our cover photographs. New to the 1976 photo are of course, Dean Bowman and Dean Herring. They replace Dr. Wiggins, President of Campbell College and Dean Scarlett, Dean of Drake University School of Law. The remaining five "old timers" have graduated many a class from Wake Forest School of Law. We thought you would enjoy seeing how favorably (and this word choice is not indicative of the fact that I will have three of the five my last semester at Wake) the past twenty years has treated your professors.

The 1956 photograph points to two other topics: the size of the current faculty and a new feature beginning in this issue of the *Jurist*.

Mr. Joel Newman has joined the faculty this year, which with Professor George Walker's return from a year at Yale, brings the total full-time faculty to 19.

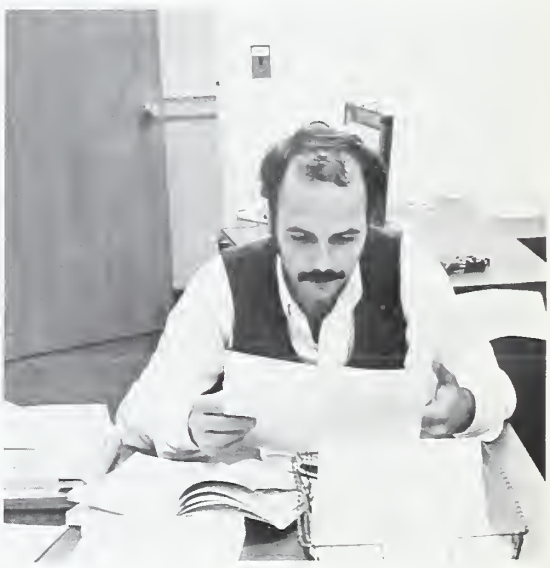
Mr. Charles Taylor joined the part-time faculty last year bringing that total to 4. We hope to provide you with a composite look at these people in our next issue and perhaps thereby supplying one of the ingredients for another "test of time" cover in the future.

"The *Jurist* Looks Back" is intended to give you an opportunity to share your photographs with other alumni and friends. We have initiated the feature with photos contributed by the faculty and the Alumni office. It will be up to each of you to help sustain "the *Jurist* Looks Back" by sending us photographs that will be of interest to friends and alumni. Please identify your pictures by writing your name and address on the back, and if possible, identify those in the picture. We do not need the negatives and your photos will be returned to you.

As has been stated many times in the past we urge your participation in this, the alumni magazine. (In mulling over the choice of the word urge in the preceeding sentence, Mark Twain's adage comes to mind: "The difference between the right word and the almost right word is like the difference between lightning and a lightning bug!") While the evasive word that could be likened to lightning remained distant our needs remain high, and, I can, therefore, only "urge your participation."

Specifically, then, the *Jurist* needs your nominations,for the candidate for the Outstanding Alumni Award, your photos for "The *Jurist* Looks Back," your Legal Articles and suggested topics for legal articles and your class notes information. Additionally, for the next issue of the *Jurist* we would be indebted for any "Nig Stories." Robert E. Lee "graduates" with the class of '77 and we plan a feature story on "the Nig."

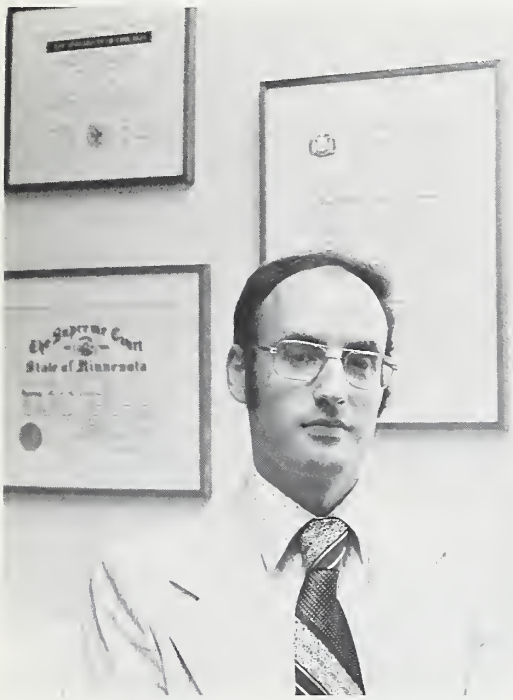
David G. Singleton Jr.



# LAW SCHOOL NEWS

## Mr. Joel Newman

Mr. Joel Newman has joined the,law faculty as an assistant professor specializing in taxation. He earned his undergraduate degree from Brown University and subsequently received his law degree from the University of Chicago.



Mr. Newman had been in private practice since his graduation in 1971, having worked for two years in New York City and three years in Minneapolis, Minnesota. While he was in practice, Mr. Newman enjoyed contact with his clients on a personal level and hopes to continue such communication in his first teaching experience here at Wake Forest. He is currently teaching Legal Bibliography and Taxation I. He will teach Estate and Gift Taxation together with Corporate Finance in the spring semester.

A native of Valley Stream, New York, Mr. Newman is married and has one child, Bryce, age 2.

## Mr. Charles Taylor

Wake Forest School of Law has added a lawyer in residence to its faculty, Mr. Charles Taylor. Mr. Taylor is a Wake Forest alumnus and considers his return to the campus as coming home to familar surroundings.

After graduating with honors from Wake Forest undergraduate and law schools, Mr. Taylor practiced with a small firm in Kinston, North Carolina before joining the Judge Advocate General Corps, Department of the Army. He has instructed in basic legal and military subjects as well as having extensive counsel practice, specializing in criminal law. He is also a certified military judge. After a 25-year legal career in the military Mr. Taylor retired at the rank of colonel.

Presently, Mr. Taylor is involved with the Trial Court and Legal Bibliography programs here at the law school. He commented that trial and appellate adversary proceedings were of particular interest to him and he is pleased to be working in that area.

Mr. Taylor and his wife, who is a native of Winston-Salem, have two children.

## Mrs. Gail O. Donaway

Wake Forest School of Law feels very fortunate to have secured the services of Mrs. Gail O. Donaway to become the Placement Director for the law school. A graduate of the University of New Hampshire with a Masters of Education from the University of Miami, Mrs. Donaway previously had served as director of financial aid operations at the University of Miami Financial Aid Services Offices.

The placement office will continue to pursue an active and aggressive course of action. Mrs. Donaway cites the following goals which the office will encourage:

1. A great number of on-campus interviews.
2. Appropriate employment during the school term.
3. Summer legal work with both law firms and non-profit organizations.
4. Cooperation with the undergraduate school to seek opportunities with businesses which would not ordinarily visit the law school.
5. A program to make students aware of all the opportunities available to them.

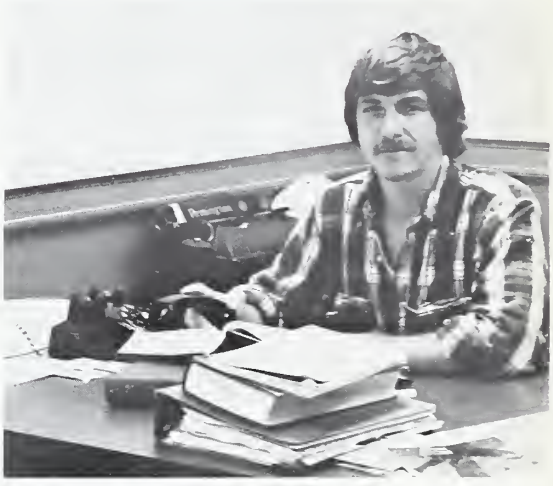
The office hopes to be an information gathering center accessible to all students in the law school.

Alumni are in a very unique position to offer advice to students, to forward news of available openings in addition to employing our graduates and students. All alumni and friends of the University are encouraged to contact Mrs. Donaway whenever the placement office can be of assistance.

## Student Bar Association

*Rich Manger*

The Student Bar Association is looking forward to what promises to be a very active year in 1976-77. There appears to be a renewed interest in SBA activities, as many people have signed up to work on the various programs sponsored by SBA, and suggestions and ideas from the faculty and student body at large have deluged the council. An indication of this revitalized



interest is the fact that 21 members of the first year class, or approximately one out of every eight students in the class, competed for the 5 representative positions available in the SBA.

Several programs from past years are being continued this year. For the past three years the Honor Code Committee and its various members have sought to formulate an Honor Code which will meet

with the approval of both faculty and students. Their efforts have been frustrated by the inability of faculty and students to agree on the scope of certain basic provisions. These groups are at loggerheads on two provisions. One is the so-called Toleration Clause, whereby any student who witnesses a violation of the Honor Code and fails to report it may also be found guilty of violating the Code. Another provision causing concern encompasses disciplinary action for non-academic matters. Most students feel this is beyond the authority of an educational institution. In order to alleviate these problems and successfully establish the Honor code, our revised version will base these standards on the ABA Code of Professional Responsibility. Since most of us will be subject to the ABA Code for the duration of our professional careers, we hope that its application to ourselves as law students will be viewed as reasonable by both faculty and students. Jack Nichols, who has worked with the Honor Code Committee since its inception, will be providing valuable insight and direction to the Committee working under Teresa Bowden, our Vice-Chairperson.

The SBA is fortunate to have Gary Corne back this year in his second stint as Chairman of the Speaker's Program. Last year under his guiding hand, the program was more successful and dynamic than ever before. This year, with a larger, more active committee, we look forward to another solid program. In the first semester, the committee will focus on the political races and upcoming legislative proposals in North Carolina. There will also be an extremely interesting discussion on one of the most controversial issues facing the nation today, prison reform. This panel discussion will take place in November, with two penologists from the State Department of corrections and four inmates from the Triangle Corrections Center taking part. In the spring, the program will present a discussion on Employees' Stock Option Benefits and a symposium on the civil and criminal aspects of electronic surveillance. Ideas for further programs are being solicited.

The Open Forum and Public Relations programs are once again in full swing. Both Deans Bowman and Herring have expressed interest in continuing to participate in the Open Forums. In these forums, the students are invited to express their views and question the Deans on matters of importance to our law school community. The Public Relations Committee seeks to increase effective dialogue between faculty and students. This year we are beginning a roundtable discussion on the first year legal bibliography program which has stirred some controversy. All five legal bib professors will be meeting interested students to discuss the program.

Faculty evaluations by the students have taken on a renewed air of controversy. This year, the issue is whether to publish the objective results in the revived student newspaper. The SBA has voted not to publish the evaluations, however, a large number of students feel they should be entitled to see the results of the evaluations, and therefore this promises to be a hotly contested issue throughout the year.

SBA is also involved in some relatively new areas of endeavor. For the first time in several years, we are attempting to revive the defunct student newspaper, The Hearsay. There is a tremendous need for a newspaper to voice student opinions and provide news on pertinent issues such as academic and faculty policies, student activities and academic discretion in regard to grades. Dan Rheam, the new editor, has the monumental task of building a viable newspaper from scratch.

North Carolina has a statute permitting law students to be certified to work with attorneys representing clients in court. Certification is possible after completion of two full years of law school. The SBA has formed a committee to establish a program enabling Wake students to participate in actual representation of clients. In the past, ideas for clinical programs run by the law school have been rejected because of formidable costs. It is hoped that certification, with the help of the Forsyth County Bar Association, will provide this much needed experience at minimal cost to the school.

This year the students will benefit by a new faculty policy which should provide more effective and cooperative interaction between faculty and students. This policy allows the Dean to invite the SBA Chairperson or other students to participate in faculty meetings concerning issues of particular importance to the student body. I personally look forward to this opportunity to work more closely with the faculty and feel that this is a major reason to look forward to a successful year in SBA.

## The Law School Dormitory

A Law School Dormitory Committee has been formed to implement plans for the construction of a dormitory on campus to house law students. The committee's goal is to devise a plan that will provide lounge spaces for the two legal fraternities and housing for both male and female students. Locations on campus which would provide the closest proximity to the law school are being explored and negotiated with University officials. The committee hopes to set a room fee which will be competitive with rates for small apartments and rented rooms off campus, to provide adequate parking facilities, and to generally upgrade the quality of life enjoyed by those who choose to live on campus.

The Dormitory Committee is composed of Professor Sizemore, Professor Corbett, Assistant Dean Herring, Dean Bowman, Marc Acree, David Brantley, Nancy Barnhill, and William C. Warden.

Any suggestions from alumni or students will be welcomed.

---

## The SBA-Jurist Outstanding Alumnus Service Award

*Manes M. Merritt*

In the past, the Outstanding Alumnus Service Award was presented annually to an alumnus of the Wake Forest University School of Law, who in the opinion of the Student Bar Association, deserved such recognition. The award was solely a Student Bar Association function, with advice and recommendations from the office of the Dean and from members of the faculty.

This year the Student Bar Association and the *Jurist* have joined forces to present the award. We have decided to extend to our alumni the opportunity to nominate candidates for the Outstanding Alumnus Award.

The facts which should be considered in nominating candidates for the Outstanding Alumnus Award are:

1. Standard of excellence throughout the nominee's career, though not necessarily a legal career,
2. Service to the Wake Forest University School of Law,
3. Service to the community, the state, and the nation,
4. General good character.

The award will be presented at the Law Day Banquet this spring. At the same time, the *Jurist* will include in its spring issue an article on the recipient of the

award as part of the distinction bestowed on the Outstanding Alumnus. Not only will the recipient receive a plaque so designating him/her as the Outstanding Alumnus of the Year but there will be presented to the school an additional plaque where all recipients of the SBA-Jurist Outstanding Alumnus Service Award will be listed.

Recipients of the award in the past have truly been outstanding members of the alumni. They are:

Basil M. Watkins
R.P. Burns
Judge J. J. Hayes
G. C. Carswell
J. F. Hoge
Judge Edwin M. Stanley
James W. Mason
Judge John D. Larkins
Dr. Norman A. Wiggins
Judge Walter J. Bone
Justice Joseph Branch
Dean Carroll W. Weathers
Senator Robert B. Morgan
Judge David Britt
Judge Woodrow Jones

It is the hope of the Student Bar Association and the *Jurist* that the alumni will aid in the selection of the Outstanding Alumnus of the Year. All nominations should be submitted to the nominating committee by March 1, 1977. Please include a brief description of the individual's qualifications and submit to: Mr. Manes Merrit, the *Jurist*, Wake Forest University School of Law, P.O. Box 7206, Winston-Salem, N. C. 27109.

## The Moot Court Board

*W. Walker*

Appellate advocacy is alive, well and getting stronger at Wake Forest this semester. Fifty-eight second and third year students (a record enrollment) participated in the Practice Court II and the Edwin Stanley Competition. Both programs require students to brief and argue from trial transcripts of currently active cases. Twenty students competed for the Stanley prize in a case that principally concerned North Carolina's evidentiary bar of an agent's statements when those statements are made in a context beyond the agent's scope of authority. Special recognition for jobs well done this semester is due Peg Evers, Kathy Gray and Vic Lefkowitz, who served as Justices in charge of the Practice Court II and Stanley Competition programs. Their work was professional, thorough and of great benefit to everyone in their respective programs.

On the national level, the Board is fielding teams for at least seven upcoming competitions and has high hopes for improving last year's performances. Of particular note among the 1975-1976 Wake Forest team members were Jack Ruby, '76, who finished second in the National Labor Law Competition and Delinda Wall, '77, who was named fourth best oralist in the International Competition, and then joined Becky Connelly, '77, and Doris Shaw, '77, in winning the third place brief award in that competition.

The Board intends to sponsor and administer a spring semester competition for first year students with the goals of identifying and recruiting the best freshmen oralists for the following year's national teams. A systematic and rigorous selection procedure should help improve the quality of our teams as well as generate interest in Board membership. In addition to sponsoring the competition, the Board intends to lend an administrative hand in the operation of the spring Legal Bibliography appellate exercise.

Looking ahead, we have plans for a major revision of the Board's charter and basic organization to meet the changes that have accompanied the Board's expansion in both membership and responsibilities. We believe that the Board is providing a valuable experience to students, whatever their future plans, and we intend to improve that opportunity.

## BALSA

*Davida W. Martin*

The Wake Forest University School of Law Chapter of the Black American Law Students Association (BALSA) is in its fourth year of existence. Its officers for the 1976-77 school year include: Davida Martin, President and Lee Evans, Vice President.

This year BALSA has planned more activities than in any year in the past. The organization, as a whole, will visit various local colleges and universities recruiting qualified minority members who are interested in attending our own Wake Forest University School of Law. BALSA also plans to communicate with black law student associations of other law schools in order to pool any recruiting efforts and share in other activities. One suggestion is that we unite in bringing a nationally known speaker to campus. The Wake Forest Chapter of BALSA is also trying desparately to cut down the high attrition rate among blacks in law school.

In addition to its self-improvement activities, BALSA has planned various social activities to include the entire law student body. Among these activities are a "Happy Hour" to be held at a local club, and a spring potluck picnic and softball game. A spring symposium is planned consisting of two local speakers to be followed by a dinner for those attending. It is also hoped that we can send some of our members to the national BALSA convention.

BALSA's long-range plans include a scholarship fund for qualified blacks who might not otherwise have the opportunity to attend law school.

Two of the primary purposes of BALSA are: (1) to aid its members in identifying and solving problems which they have in common; and (2) to encourage more blacks to enter the legal profession.

We urge your support of the Wake Forest University Chapter of the Black American Law Students Association.

## Environmental Law Society

*Jeremy Flachs, David Bland*

The Environmental Law Society is an organization creating a forum for the discussion and research of legal and non-legal environmental issues. The Society, with a present membership of twenty-two students, is a growing and enthusiastic group of people who desire to become more knowledgeable in the field of environmental law. A list of topics and projects which have been or will be researched by Society members include, the legal aspects of thermal pollution, the practicality of current E.P.A. standards, little known and utilized N.C. environmental statutes, the status of the "Bottle Bill" and the availability of environmental law job opportunities in North Carolina. In addition, the Society is now scheduling two debates. The first will concern the value and necessity of current environmental legislation in the United States and the second will argue the merits of nuclear power as a practical and necessary source of energy. All students, faculty and alumni are encouraged to become involved.

## Women in Law

*Pam Jamarik*

In its third year as a law school organization, Women in Law continues to sponsor various activities in an effort to further a number of long range goals. As members, we hope to inform ourselves and others of the legal conditions encountered by women from all classes of society. Simultaneously, we explore the role we, as law students and as potential attorneys, can play in effecting social change. We encourage all members of the law school community, both men and women, to join WIL and to attend any of our programs of particular interest to them as individuals.

After kicking off the year with a success-

ful pot luck supper (where we were able to meet friends, old and new, over a wide assortment of culinary delights), we have begun to organize committees to work on several different projects. Of primary importance is our work on a resolution endorsing a policy of non-discrimination in the legal profession. We hope to present this resolution to the state bar organizations later this year.

Another on-going project is our recruitment program at the undergraduate level. Various members of WIL will be visiting colleges in North Carolina and Virginia this fall to encourage more women to apply to law school.

Throughout the year, WIL will sponsor various speakers and films at the law school. We have invited local members of the two major political parties to speak to us the week prior to the November election about the candidates and the campaign. Later in the year, we will present a panel discussion on the Equal Rights Amendment and a speaker and film on the problems and legal issues involved in rape. We invite everyone to attend these programs as well as our social functions throughout the year. Officers for 1976-77 are first year Vice President, Lucy Lennon; second year Vice President, Virginia Mahoney; third year Vice President, Janice Scott; and President, Pam Jamarik. Our faculty sponsor is Dean Buddy Herring.

## The Law Fund
## 1975 - 1976

The 1975-1976 Law Fund exceeded its goal and all previous records by several thousand dollars. A total of 549 contributors provided $206,191.75 in operating and endowment funds. The figure of 549 includes 491 alumni or 27.4% of the total alumni contributing. For 1975-1976 there were 280 PARTNERS and 76 SENIOR PARTNERS. To become a Law School Partner requires a gift of $100 or more. Note: If you graduated in 1976 you may qualify by giving $25 or more; if in 1975, a gift of $50 or more; if in 1974, a gift of $75 or more.

For 1976-1977 the Law Fund is seeking $175,000 for operations and endowment. In addition the campaign is attempting to increase alumni contributors from 27.4% to 35%.

Records in the Development Office indicate that the following persons, corporations, foundations contributed to the 1975-76 Law Fund:

### Alumni

**Half-Century**

* Walter J. Bone
* W. Bryan Booe
* Clyde P. Harris
Bascombe S. Hensley
* Walter Scott Hobbs
* Lex Marsh

George S. Quillen
** Gordon B. Rowland
Herman T. Stevens
** John A. Stevens
* Carroll W. Weathers
* Erwin T. Williams

**1926**

* Henry P. Edwards
* George B. Godfrey
Albert M. Rice

**1927**

** J. W. Babson
* Brantley C. Booe
** Glenn G. Henson

**1929**

John C. Ashcraft

**1930**

** W. H. McElwee

**1931**

* Wade E. Brown
* Kyle Hayes
** James R. Nance

**1933**

John R. Branham
Wm. H. Glenn

---

* Partner
** Senior Partner

** Barron K. Grier
* Jake W. Harrill
* Judge Harvey A. Lupton
* Leon D. Smith
John H. Vernon, Jr.

**1934**

* Walter J. Pittman
** C. Woodrow Teague

**1935**

H. W. Calloway, Jr.

**1936**

* Judge Joseph D. Blythe
** R. D. Holleman

**1937**

Judge A. Pilston Godwin, Jr.
* Judge Woodrow W. Jones
** Hubert E. Phillips
Joe B. Pittman
** J. Max Thomas

**1938**

J.O. Bishop
* Justice Joseph Branch
** Judge David M. Britt
* Lynn D. Durham
** Shearon Harris
* H. Clay Hemric
* Robert Cary Josey, III
* Charles L. Little
** James W. Mason
* Larry S. Moore
Joel Francis Paschal
* Dickson Whisnant

**1939**

* Fred W. Bateman
Robert B. Campbell

**1940**

* Graham S. DeVane
** Clifton W. Everett, Sr.
* Eugene H. Phillips
* Archie L. Smith
** W. Fred Williams

**1942**

* C. Glasgow Butts
** Porter Byrum
* Joseph B. Huff
* John E. Tate
Cicero P. Yow

**1946**

* Seavy A. Carroll

**1947**

Willis E. Gupton
Charles T. Myers

**1948**

* Frank C. Ausband
** Paul B. Bell
* Everette C. Carnes
* Guy H. Cox, Jr.
* Wiley E. Gavin
* Frank L. Todd
** Fred D. Turnage
** Larry L. Williams

**1949**

Jack F. Canady
** Warren C. Casey
* Kermit Coble
** Warren L. Coble
John F. Crossley
* A. D. Folger
* Charles A. Hostetler
** Horace R. Kornegay
* Ray F. Swain
** E. Murray Tate, Jr.
** Richard A. Williams

**1950**

* Carl L. Bailey
* Samuel Behrends, Jr.
** Evander M. Britt, Jr.
** Stanley J. Corne
** Baxter H. Finch
* C. E. Hancock, Jr.
* Worth H. Hester
* Grady S. Patterson, Jr.
* W. H. Scarborough
** Judge Hiram H. Ward

**1951**

Richard S. Clark
* Samuel M. Millette
** W. Harold Mitchell
* George F. Phillips
** Leroy Robinson
** Sankey Robinson
John W. Sharpe
* James E. Walker
** McNeill Watkins

**1952**

* Samuel E. Britt
James F. Bullock
* Paul T. Canady
* William Hough
* James E. Sizemore
* A. Clyde Tomblin
* Russell Twiford
* Gerald F. White
* Norman A. Wiggins

**1953**

** C. D. Clark, Jr.
** Marion J. Davis
* B. T. Henderson, II
* Hugh M. Martin
** Lonnie B. Williams

**1954**

* Nancy Fields Fadum
* Everett L. Henry
Lester P. Martin
Rudolph G. Singleton, Jr.
* Kennedy W. Ward

**1955**

* D. Wesley Bailey
* Luther J. Britt, Jr.
** Wade M. Gallant, Jr.
* David P. Mast
** Joe Mauney
William L. Moses
* W. E. Musselwhite
* W. Linville Roach
* Thomas E. Strickland
Alan J. White

**1956**

* Eugene Boyce
Gilbert H. Burnett

---

* Partner
** Senior Partner

* John C. W. Gardner
* Clarence E. Gerrans
* Col. Richard F. Gordon
M. Randall Head
** James E. Johnson
* Jack E. Klass
** Frank P. Meadows, Jr.
* William B. Mills
John C. Riggs
* Hugh M. Wilson

**1957**

** Jeff D. Batts
* M. Alex Biggs
Wayne M. Brendle
** Willis E. Murphrey, III
** J. Guy Revelle, Jr.
D. M. Smaw
* Jerry G. Tart

**1958**

W. Earl Britt
* Charles B. Casper
Dan Fouts
* Don M. Pendleton
* Graham A. Phillips, Jr.
Robert E. Riddle
* Granville A. Ryals
** Harold R. Wilson
* Frank B. Wyatt

**1959**

* Louis A. Burney
** A. H. Gainey, Jr.
* Ralph E. Goodale
* P. M. Sharpe
S. J. Webster

**1960**

Donald R. Canady
Ronald C. Dilthey
D. Lamar Dowda
** Kennieth S. Etheridge
* Robert H. Forbes
* Charles G. Furr
* Clive I. Goodson

---

* Partner
** Senior Partner

* Marvin K. Gray
* William E. Hall
* Robert A. Jones
R. Kaison Keiger
** George B. Mast
* Louis B. Meyer
Richard M. Warren
* Frank J. Yeager

**1961**

* Lloyd F. Baucom
** Wiley F. Bowen
F. Fred Cheek
* Leon Corbett
* Charles M. Davis
* W. Richard Gentry
* Emil F. Kratt
* Larry A. Thompson
* Robert M. Weinstein
** Philip B. Whiting

**1962**

* John H. Bingham
Fred S. Black
* Charles B. Deane, Jr.
* Murray C. Greason
* Reginald S. Humel
* C. E. McElroy
M/M A. Lincoln Sherk
* James L. Swisher
* Charles R. Tedder

**1963**

* Jack P. Gulley
* Robert C. Hedrick
Ashley L. Hogewood, Jr.
* John R. Hooten
* H. Eddie Knox
Thomas W. Moore, Jr.
Thomas H. Morris
* Ralph A. Walker

**1964**

Bob W. Bowers
* L. Frank Burleson
* Joe N. Cagle
* Charles E. Clement
* Sidney S. Eagles
James A. Harrill, Jr.
* Larry E. Harrington
* Robert L. Holland
* Richard M. Hutson

* K. Michael Koontz
* Bobby G. Martin
* Edward Murrelle
** Wm. C. Myers
* James F. Penny
P. Eugene Price
* Wayne C. Shugart
* Larry B. Sitton
** Franklin Smith
* Robert V. Suggs
* Raymond D. Thomas

**1965**

* David C. Barefoot
** Jimmy H. Barnhill
** Jerry L. Eagle
Grady Ferrell, Jr.
J. Laird Jacob
J. Ben Morrow
* John F. Morrow
* Joseph R. Radzius
* W. Warren Sparrow
* Richard Tyndall
* James R. Walker

**1966**

** Marvin K. Blount, Jr.
J. Harold Bolin
* Wm. Kearns Davis
* Robert A. Freeman
R. Stephen Glass
Thomas M. Grady
Peter J. Hunter
Walker H. Jones, Jr.
* Stephen E. Lawing
* Joseph W. Moss
Robert W. Porter
Fred J. Smith, Jr.
* E.C. Thompson, III
Edward R. White
* James T. Williams

**1967**

* James P. Ashburn
* John F. Bost, III
Robert B. Campbell
* F. Leary Davis, Jr.
A. Doyle Early, Jr.
** C. W. Everett, Jr.
* Laurence S. Graham
* Bobby H. Griffin
John W. Griffis

* James E. Humphreys, Jr.
Charles F. Lee
* Don Maddox
* James T. Martin
** William F. Moser
H. T. Mullen, Jr.
* Mark B. Perry
** Larry W. Pitts
Robert B. Rascoe
Jonathan D. Reiff
Paul L. Rifkin
* Everette C. Sherrill
Jeffrey C. Thier
** John H. Vernon, III
W. Bailey Watson
* Barbara C. Westmoreland
** Charles B. Winberry
David M. Zacks

**1968**

* Joe E. Biesecker
* J. Donald Cowan
Gerard H. Davidson, Jr.
Mahlon W. DeLoatch
Carroll H. Leggett
* Alton Y. Lennon
* Kenneth A. Moser
* Broxie J. Nelson
Norman L. Nifong
David H. Wagner
D. M. Williams, Jr.
* Charles R. Young

**1969**

* T. Merritt Bumpass, Jr.
* Vernon A. Cardwell
Ernest L. Evans
Robert F. Fleming
Henry C. Frenck
* Wesley B. Grant
Alan B. Head
Richard B. Howington
R. Bradford Leggett
* David V. Liner
Robert C. McClymonds
Robert H. McNeill, II
Ronald D. Nicola
** Norbert J. Pail
* Archie L. Smith
N. Carlton Tilley, Jr.
Thomas S. Thornton
McNair Tornow
* Russell G. Walker, Jr.
W. Fred Williams, Jr.

**1970**

* Carl E. Bell
R. Terry Bennett
* R. Gene Braswell
James N. Deinlein
Leslie B. Farmer
Mark E. Galloway
* Edgar B. Gregory
Jake C. Helder
T. J. Keith
Robert K. Leonard
John H. Loughridge
Richard Lyle
Gregory Schiro
Robert C. Stephens
John G. Wolfe

**1971**

* Donald E. Britt
Jones Pharr Byrd
* Sam B. Currin, III
M. Jay DeVaney
* J. Samuel Gorham, III
* Adam C. Grant
* John E. Hauge
H. Clay Hemric, Jr.
* Buddy Herring
* E. Grey LaPrade, Jr.
* Paul H. Livingston, Jr.
W. R. Loftis
J. Bruce Mulligan
* John H. Nicholson, III
* G. Edgar Parker
* W. W. Pitt, Jr.
C. Ernest Simons, Jr.
* Gary S. Smithwick
J. E. Switzer
* Gary B. Tash
Donald M. VonCannon

**1972**

* Brenton D. Adams
* Stephen F. Adams
Charles J. Alexander, II
John L. Barber
Ronald W. Black
* Carolyn E. Burnette
W. M. Cobb, Jr.
* Howard D. Fashbaugh, Jr.
* Charles H. Harp
* C. Diederich Heidgerd
* Deborah A. Henderson
Carl Hibbert
* William F. Horsley
John M. May
Dennis W. McNames
G. Thompson Miller
* J. Larkin Pahl
Douglas S. Punger
* John P. Simpson
* Norman L. Sloan
John William Smith
* Richard T. Strange
* Oliver S. Surles
* Richard C. Titus

**1973**

* Alfred G. Adams
William T. Biggers
* Ellis M. Bragg
* J. B. Cheshire V
James E. Cross
* W. T. Culpepper, III
Charles R. Dashiell, Jr.
Charles F. Eakes
Bruce C. Fraser
* Edward R. Gatton
Larry Habegger
Beirne Minor Harding
* T. Paul Hendrick
Edward B. Higgins
* Robert E. Hodges
I. Manning Huske
* William T. Jeffries
* Walton C. Jennette, Jr.
Robert O. Johnson
L. C. Lackey
Moses Dow Lassiter
Robert J. Lawing
* Joseph T. Nall
Thomas W. Prince
* James B. Spears
Robert H. Swennes, II
John P. VanZandt, III
Gary W. Williard
* Cynthia Jean Zeliff

**1974**

* Roy A. Archbell, Jr.
David B. Ashcraft
* Mathew E. Bates
George J. Bauer
* Beverly T. Beal
* Charlotte Bennett
Malcolm B. Blankenship
* Larry W. Bowman
* Raymond A. Bretzman

---

* Partner
** Senior Partner

* Oliver Carter
* W. Thompson Comerford
* Wilton R. Duke
Edward M. Ferguson, Jr.
* Arba S. Godwin, Jr.
* Edward J. Harper
* Kenneth D. Knight
* Laura A. Kratt
L. C. Lackey
Durwood Laughinghouse
Bruce Magers
* Hiram J. Mayo, Jr.
* Katherine S. Miller
* J. B. O'Donnell, Jr.
* D. Floyd Osborne, Jr.
Wm. Daniel Pate
Ron Perkinson
* Paul E. Pinson
Robert W. Pitts
* T. Lawrence Pollard
Edward E. Raymer
* Roger S. Tripp
Samuel J. Villegas
* Gary J. Walker
* Robert D. Walker, Jr.
R. Michael Well
Robert N. Wells

**1975**

* R. Paxton Badum, Jr.
* James F. Bailey
* Albert R. Bell
Stephen J. Braun
* E. Lawson Brown
* William S. Cherry, Jr.
* Harvey L. Cosper
* Ronald M. Cowan
* Christopher S. Crosby
* Anthony S. diSanti
Edward M. Ferguson
* David C. Francisco
* Ann Scott Fulton
* E. Vernon Glenn
* M. Douglas Goins
* Henry A. Harkey
* Michael F. Joseph
* Anita Jo Kinlaw
Richard M. Lewis
* Paul E. Marth
* James Mc. Martin
* Wm. E. Martin
Mary I. Murrell
* Joyce R. Neely
* D. Sam Neill
* James W. Page
* Phyllis S. Penry
J. Andrew Porter
* James K. Roberson
Woodrow W. Seymour, Jr.
* Robert F. Siler
* D. Clark Smith
* Richard D. Sparkman
* James P. Weaver
* William E. Wheeler

**1976**

* Dayle McAnally

**Parents**

* Fred C. Ash
* Ben C. Ashecraft
** M. M. Blanchard
Mrs. Richard C. Burton
Lucian Capone
* Thomas B. Carpenter
Peter J. Catanese
* R. Theodore Davis
Robert H. Eastman
* Dr. Robert G. Fitzgerald
** E. D. Gaskins
** Dr. Nicholas G. Georgiade
* Susanna Gwyn
M/M John P. Lewis
** L. D. Long
** Edward J. Mack
* Dr. & Mrs. W. J.
McAnally, Jr.
* Robert E. Merritt
William A. Nichols
** Donald Parser
* Harry Randall, Jr.
** Leon L. Rice, Jr.
** E. Norwood Robinson
* Eugene G. Smith, Jr.
Mrs. Margaret C. Weaver
** W. R. Webb
* S. D. Saunders

**Special**

** Estate of V. B. Beckham

**Friends**

* Henry L. Anderson
** Jack C. D. Bailey
* W. Powell Bland
** Marvin K. Blount
** Pasco M. Bowman
* J. Kermit Coble
** Elizabeth G. Goldberg
** Mrs. L. T. Grantham
* Jane H. Kelley
* Laura A. Myers
Mrs. Quincy Nimocks
* Howard L. Oleck
** Jack Roemer
* R. D. Sanders
* Henry F. Sherrill
* David Shores
Helen Vespico
* A. D. Ward
* Vivian Wilson

**Foundations**

American Credit Foundation
American Law Institute
Sarah G. Kenan Foundation
N. C. Bar Foundation
Rockport Fund

**Corporations**

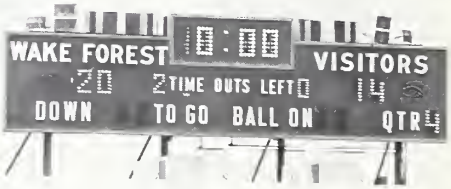
Davis, Inc.
Proprietary Association
R. J. Reynolds Industries

**Others**

Forsyth County Lawyers
Wives
Student Bar Auxiliary

In the event there is an error in this listing, please call Julius Corpening at 919-761-5224.

# ALUMNI HOMECOMING WEEKEND



# LEGAL ARTICLES

## Automobile Insurance - - Omnibus Clauses - - N.C. Adopts "Hell and High Water" Rule

### I. INTRODUCTION

North Carolina, like most states, requires that all automobile liability insurance policies contain a so-called "omnibus" clause providing that the policy covers not only the named insured, but any other person while using the automobile provided the use is with the named insured's permission or consent. The scope of the coverage afforded under such a clause has been frequently litigated. Few problems arise when the named insured is the driver. But, when the driver is a person using the car with the permission or consent of the named insured, courts have disagreed over the effect of such a person's deviations from the permitted use.[1]

Courts have followed three different rules in determining the effect of these deviations.[2] Plainly stated, they are: 1-Strict or conversion rule. The actual use of the motor vehicle at the time of the accident must be one contemplated when permission for use of the automobile was given. 2- Liberal or "Hell and high water"[3] rule. If the original taking was with the insured's consent, every act subsequent thereto while the permittee is driving the car is held to be with the insured's permission to permit a recovery under the omnibus clause. 3- Moderate or "minor deviation" rule. An intermediate position between one and two (above). Protection will be afforded the permittee if his use is not a gross violation of the terms of the permission.

Clearly, the rule a court decides to follow will often be dispositive of a case. This note will examine North Carolina's recent adoption of view number two, the liberal rule.

### II. STATUS OF AUTHORITY IN NORTH CAROLINA

The phrase "any other persons in lawful possession"[4] was removed from the North Carolina statute requiring omnibus clauses in 1953, and added back in 1967. The North Carolina courts have given various constructions to the phrase.

In *Hawley v. Indemnity Insurance Co. of North America*,[5] a 1962 case, the court held that since the legislature repealed the phrase, it intended no more coverage than that afforded by the moderate rule. The court pointed out, however, that the phrase was sufficiently broad to encompass the liberal rule. That the omnibus clause in North Carolina had been interpreted according to the moderate rather than the liberal rule was reaffirmed in *Bailey v. General Insurance Co. of America*,[6] a 1965 case.

The case of *Jernigan v. State Farm Mutual Insurance Co.*,[7] was the first case involving interpretation of the 1967 amendment. The North Carolina Court of Appeals interpreted the amendment as signifying an intention of the legislature to adopt the liberal rule. Coverage was denied, however, in *Jernigan* because there was no evidence that the owner's permittee had authority to permit another to use the car.

In *Iowa National Mutual Insurance Co. v. Broughton*,[8] the court again denied coverage in another sub-permittee of the owner's permittee situation. The case was decided on the grounds that there was no evidence of lawful possession. The Supreme Court, however, did not cite *Jernigan's* approval of the liberal view in its decision. Moreover, it quoted with approval language in the *Bailey* decision to the effect that without specific authorization from the named insured, the initial permittee does not have authority to select another permittee. The combination of

these factors lead to the inference that the court continued the moderate rule of construction in North Carolina.[9]

## III. PACKER v. TRAVELERS INSURANCE CO.

A recent decision by the North Carolina Court of Appeals settles the issue.[10] In *Packer,* plaintiff was injured by the negligent operation of a truck insured by the defendant. He brought an action to establish defendant's liability under its contract of insurance with the truck's owner. The truck was being driven by an employee of the owner. He had permission to take the truck home on Friday and bring it back to work on Monday. The accident occurred on Saturday while the employee was driving the truck for his personal use. The jury found for the plaintiff, the trial court entered judgment for the defendant notwithstanding the verdict, and plaintiff appealed.

The Court of Appeals held that since plaintiff had established lawful possession by the employee, he was not required to present further evidence that the employee had the owner's permission to drive on the very trip and occasion of the collision in order to establish coverage under the omnibus clause of the owner's liability policy. The case was remanded for entry of judgment for plaintiff upon the verdict.

*Packer* definitely adopts the liberal rule for North Carolina. Stated as it was in *Hawley,* this means that "if permission is given initially, anything goes unless specifically prohibited."[11] While Packer is not the final word on the subject because it is a Court of Appeals decision, it is hard to imagine the Supreme Court reaching an opposite result when confronted with the problem. The language of the 1967 amendment was said to encompass the liberal view in *Hawley.* Adoption of the liberal rule in the *Broughton* case would not have been dispositive. It is safe to say that the liberal rule is now the law in North Carolina.

## IV. CONCLUSION

At first blush, the liberal rule adopted in the *Packer* decision seems to place an onerous burden on automobile liability insurers. If a driver gets a car owner's permission, the insurer is liable come "Hell or high water". The preamble to the 1967 amendment,[12] however, makes clear the public policy involved. People have absolute authority to let other persons use their cars and these other persons will occasionally have wrecks. The innocent driving public should not have the practically impossible burden of proving express or implied permission of the owner to drive on the very trip and occasion of the collision. The *Packer* decision reflects this policy.

James L. Miller

## RESEARCH BIBLIOGRAPHY


1. *See,* generally, 7 Am. Jur. 2d, Automobile Insurance, §§ 109 and 119 (1963).
2. For a discussion of these rules *see* 7 Am. Jur. 2d, Automobile Insurance, §§ 120-122 (1963); 7 J. Appleman, Insurance Law and Practice, §§ 4366-68 (1962); Annot. 5 A.L.R. 2d 600, 622 (1949).
3. *See* United States Fidelilty & Guaranty Co. v. Smith, 279 F. 2d 678, 679 (9th cir. 1960).
4. N.C. Gen Stat. § 20-279(b) (1975).
5. 257 N.C. 381, 126 S.E. 2d 161 (1962).
6. 265 N.C. 675, 144 S.E.2d 898 (1965).
7. 16 N.C. App. 46, 190 S.E. 2d 866 (1972).
8. 283 N.C. 309, 196 S.E.2d 243 (1973).
9. *See* Note, 9 Wake Forest L. Rev. 438, 442-43 (1973).
10. *Packer v. Travelers Insurance Co.,* 28 N.C. App. 365, 221 S.E.2d 707 (1976).
11. 257 N.C. at 386, 126 S.E.2d at 166.
12. Cited by the *Packer* court, 28 N.C. App. at 368, 221 S.E. 2d at 709. *See also* Nationwide Mutual Insurance Co. v. Roberts, 261 N.C. 285, 290-91, 134 S.E. 2d 654, 659 (1964).


# Control of Water Pollution Due to Eroded Sediment From Construction Sites

Sediment suspended in streams, lakes, and other waters of this state is a major pollution problem. As the sediment settles out, it fills stream channels, lakes, and reservoirs. Much of the sediment originates from construction sites and road maintenance work. The plant cover is stripped off and nothing is left to prevent water from eroding the land.

To control this problem, the North Carolina General Assembly enacted the "Sedimentation Control Act of 1973".[1] The Act set up the Sedimentation Control Commission to formulate regulations for "land-disturbing activities". "Land-disturbing activities" refers to any use of the land other than farming, forestry, and mining.

The Commission's regulations apply to private as well as governmental activities. The Commission has exclusive jurisdiction over governmental activities, whether national, state, or local. However, it may grant a local government the power to act on private local matters if the local government sets up its own system meeting the Commission's specifications. In such a case the Commission and the local government will have concurrent jurisdiction to administer the Act.

Under the present regulations, an erosion and sedimentation control plan must be prepared and filed with the Commission or local government having jurisdiction, prior to the commencement of any land-disturbing activity that affects one or more contiguous acres.[2] No plan is required for activities of less than one acre. If the Commission is the reviewing body, the plan must be approved, approved with modifications, or disapproved within thirty days of its receipt. If required to modify or if the plan is disapproved, the person submitting the plan shall have fifteen days to submit a demand for a public hearing. A public hearing must then be held within thirty days of the demand in the city or county where the land disturbing activity is located. Judicial review of the final Commission action may be had in the superior court of the county in which the hearing was held.[3] If the plan is submitted to a local government, it must be subject to a review process consistent with applicable rules and laws. Failure to file a plan when one is required, or failure to follow an approved plan are violations of the Act.[4]

In implementing a sedimentation control plan, certain basic control objectives must be considered.[5] If it does not adequately provide for these objectives, the plan will not be approved. To begin with, the plan must identify critical on-site areas subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation. Special attention should be given to how damage will be controlled in these areas. The time and area of exposure of unprotected land must be kept to a minimum. Provisions for preventing upgrade surface water from running onto unprotected land should be included. The activity should be planned to minimize off-site sedimentation. Finally, means of controlling the velocity and rate of storm drainage must be planned.

In addition to the basic control requirements, a plan must meet certain mandatory requirements.[6] These requirements also apply to activities which affect less than one acre and do not need a plan. If a plan or activity is not in accordance, no land disturbing activity will be allowed and that already completed will be subject to penalization. First, no land disturbing activity shall be permitted in proximity of a lake or natural watercourse, unless a buffer zone is provided along the margin of the watercourse of sufficient width to contain visible sedimentation within the twenty-five percent of the buffer zone nearest the activity. For example, if a builder chooses a one hundred foot buffer zone, he must keep all visible

sedimentation within the twenty-five feet nearest the disturbance. However, this requirement does not apply to construction on, over, or under a natural watercourse. Second, the angle for graded slopes may be no greater than the angle which may be retained by plan cover or other erosion control structures. In any event, the exposed slope must be provided with ground cover sufficient to restrain erosion within thirty working days (Monday-Friday) of completion. Third, whenever land disturbing activities uncover more than one contiguous acre, a ground cover must be provided within thirty working days on that portion of the tract upon which further active construction is not being undertaken.

Enforcement of the Act lies with the Commission and/or local government. Both have the power to go on the land to decide any question concerning an erosion control plan, or a violation of the Act. If a violation is found, a civil penalty of one hundred dollars may be assessed. Each day of a continuous violation is treated as a separate violation. If the person is a knowing or willing violator, he may be assessed a criminal penalty of not more than five thousand dollars, or imprisonment of up to ninety days.[7]

In addition to penalties, injunctive relief may also be obtained.[8] The Commission or local government having jurisdiction may institute an action in its own name for injunctive relief from the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or threatened.

As a further remedy, any person injured by a violation of the Act may bring a civil suit against the violator.[9] The action may seek injunctive relief, enforcement of the law or plan violated, damages caused by the violation, or any combination of the above. If the amount of actual damage are less than five hundred dollars, the plaintiff shall be granted double the amount.

David H. Bland

## RESEARCH BIBLIOGRAPHY


1. N.C. Gen Stat § 113A-50 (1973).
2. N.C. Sedimentation Control Comm. Reg. § 4(a) (1974).
3. Id. at § 17(a)(4).
4. Id. at § 18.
5. Id. at § 5.
6. Id. at § 6.
7. N.C. Gen Stat § 113A-64 (1973).
8. N.C. Gen Stat § 113-A65 (1973).
9. N.C. Gen Stat § 113A-66 (1973).

# Liability of Professional Association of Attorneys for Misappropriation of Client's Funds Deposited for Investment Purposes

Through legislative enactment[1] and judicial decision,[2] North Carolina has long sought to protect its citizens from the dangers inherent in the unauthorized practice of law by non-attorneys. It has been necessary, however, to explicitly define what conduct does or does not constitute the "practice of law" in order to prevent infringement on legitimate business activities.[3]

In the companion cases of *Zimmerman v. Hogg & Allen, P.A.*[4] and *Rhodes v. Hogg & Allen, P.A.*,[5] the issue of what constitutes the practice of law is presented in a novel context. In cases of first impression in North Carolina, the Supreme Court was asked to decide whether the receipt of a client's funds for investment purposes by an officer of a professional association of attorneys was sufficiently within the scope of the practice of law to preclude a granting of summary judgment.

The officer-attorney had misappropriated a client's funds which had been deposited with him for the purchase of corporate stock. When the attorney proved to be "judgment proof" the plaintiff sought recovery from the law firm. He contended that the defalcating attorney was acting as the firm's agent in receiving the funds. The firm denied the attorney's authority to receive the funds and claimed that the actions were individual and personal in nature. The court held that genuine issues of material fact existed, requiring a jury's determination as to whether the attorney's conduct was within the apparent scope of the practice of law.

## THE ENGLISH RULE

Because of what the North Carolina Supreme Court termed ". . . the paucity of American case law on the subject . . ."[6] they considered the pertinent English authority formulating what may be termed the English Rule.

The English Rule distinguished between a client's funds deposited with a firm of attorneys for investment in unspecified securities and those deposited for specified securities.[7] Generally, the firm was liable for the embezzlement or misappropriation of a client's funds deposited with a member of the firm for specific investment. Conversely, no liability attached where the funds were to be invested in undesignated securities at the firm's discretion.[8] The evolution of this seemingly illogical rule stemmed from a prevalent practice by English solicitors, known as "conveyancing", in receiving money from clients for the purpose of supplying other clients with loans and mortgages.[9]

## THE AMERICAN RULE

Contrary to the English cases, the relatively few American cases on the subject have refused to impose liability on the innocent partners. The American cases are more recent and were not decided against the background of conveyancing" which never caught on in this country.

*Riley v. Larocque*[10] was the first American decision on this issue. The New York Court of Appeals absolved the defendant partnership from liability for a partner's embezzlement of a client's funds left with the attorney for investment. The court emphasized the firm's lack of knowledge regarding the money's receipt and found no imputed knowledge based on the fraudulent partner's receipt of the funds.

Perhaps the leading American case is *Rouse v. Pollard.*[11] A unanimous New Jersey court held for the defendant law firm, stating, "But we do not understand that it is a characteristic function of the practice of law to accept a client's moneys for deposit and future investment in unspecified securities at the discretion of the

attorneys and we find to the contrary."[12] As in *Riley,* the receipt of the money was held to be a personal transaction and not within the scope of the practice of law. Following *Rouse,* a later New Jersey case found the controlling test to be whether the actions complained of were "inherently the practice of law."[13]

A more recent federal case arising in North Carolina followed the *Rouse* rationale. In *Smith v. Traveler's Indemnity Co.,*[14] summary judgment was granted for the defendant. While citing this case in the *Zimmerman* decision, the North Carolina court gave it surprisingly little consideration. Instead, the court relied upon the California case of *Blackmon v. Hale*[15] which imposed liability on a missappropriating attorney's partners, thus holding contrary to the general American rule. The decision in *Blackmon,* however, may be supported by additional facts. The California court concluded that the defendant partners were co-trustees and thus liable because of the high duties and responsibilities imposed upon fiduciaries. The court said, "Any action taken by the partners with respect to the money in the account must be considered in light of their duties and responsibilities as trustees."[16] There was no such finding by the North Carolina court in *Zimmerman.*

## CONCLUSION

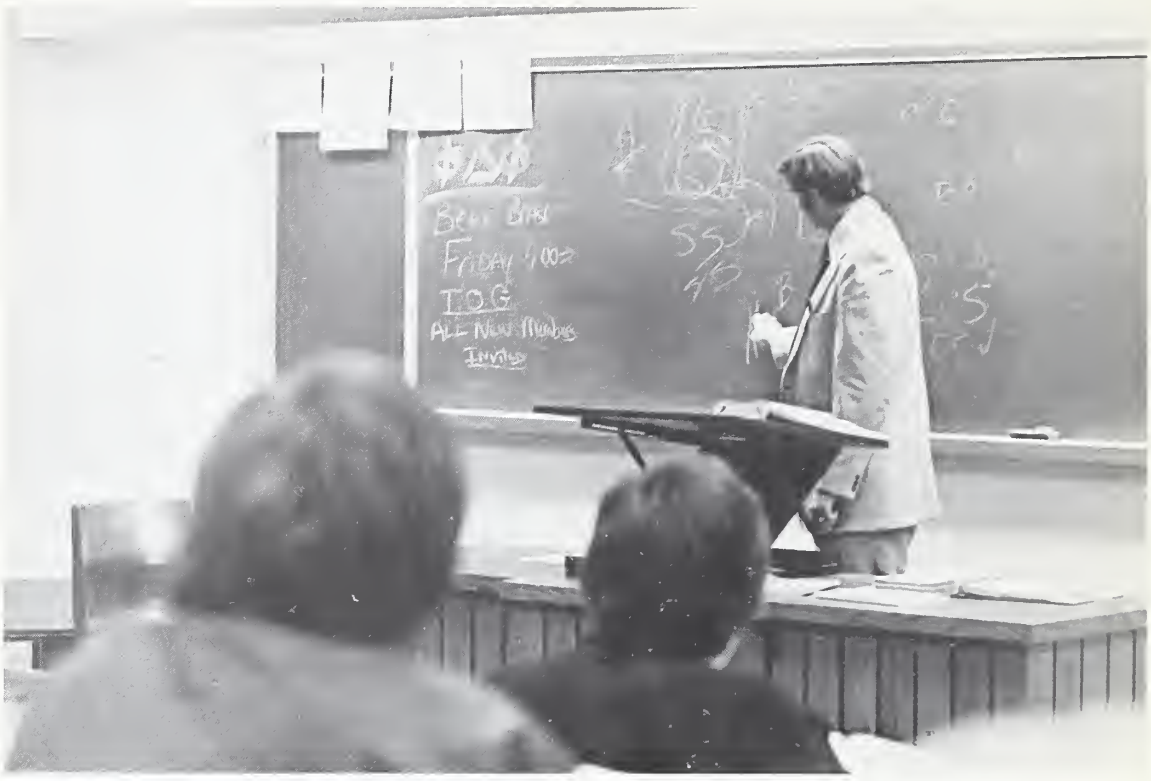
With its decisions in *Zimmerman* and *Rhodes* the North Carolina Supreme Court departed from the general American Rule denying liability of a law partnership for misappropriation of a client's funds deposited for investment purposes. With its holding the court allows an aggrieved client to take his case before a jury. To reach this holding the court had to expand traditional definitions of what is the practice of law. The receipt of funds for investment purposes, traditionally a brokerage activity, is now within the apparent scope of the practice of law and liability may be imposed on innocent members of the firm for the missappropriation of these funds. This imposes additional duties and responsibilities on the North Carolina attorney since he must take precautions against seemingly personal conduct of his partners. It is foreseeable that this reasoning may be extended to other activities, such as real-estate and other commercial transactions, which have been considered individual activities in the past.

The court's decision marks a change in the prior law in this area. *Zimmerman* does recognize, however, the increasing complexity of modern society and the changing roles of attorneys within it. The old rules must give way to meet these changes. While the possible ramifications of the court's decision may present future problems, its holding promotes public confidence in the legal profession and will generate higher standards for the practicing bar.

John P. Lewis

## RESEARCH BIBLIOGRAPHY


1. N.C. Gen Stat. §§ 84-2.1, 84-4 (1975) (defining the practice of law)
2. *Seawell v. Carolina Motor Club, Inc.,* 209 N.C. 624, 184 S.E. 540 (1936) (motor club providing attorneys in traffic cases found to be unauthorized practice of law).
3. *State v. Pledger,* 257 N.C. 634, 127 S.E.2d 337 (1962).
4. 286 N.C. 24, 209 S.E.2d 795 (1975).
5. 286 N.C. 40, 209 S.E.2d 794 (1975).
6. 286 N.C. at 35, 209 S.E.2d at 802.
7. *Harmon v. Johnson,* 118 Eng. Rep. 691 (K.B. 1853)
8. *Id.*
9. *Willet v. Chambers,* 98 Eng. Rep. 1377 (K.B. 1778).
10. 163 Misc. 423, 297 N.Y.S. 756 (1937).
11. 130 N.J. Eq. 204, 21 A.2d 801 (1941).
12. 130 N.J. Eq. at _____ 21 A.2d at 804.
13. *Ellenstein v. Herman Body Co.,* 23 N.J. 343, 129 A.2d 268 (1957).
14. 343 F. Supp. 605 (M.D.N.C. 1972).
15. Cal. App.. 3d 548, 83 Cal. Rptr. 194, 463 P.2d 418 (1970).
16. 1 Cal. App. 3d at _____, 83 Cal. Rptr. at 200, 463 P.2d at 424.00, 463 P.2d at _____ 424.




# The Expanded Application of the Ad Valorem Property Tax

## I. INTRODUCTION

The United States Supreme Court in *Michelin Tire Corporation v. Wages*,[1] considered whether a State could assess a nondiscriminatory ad valorem property tax[2] on an inventory of imported tires and tubes at the petitioner's distribution warehouse maintained within the State's borders. The Court held that the assessment of such a tax does not interfere with the free flow of commerce among the several states and is not the class of tax prohibited by the Import-Export Clause.[3]

## II. BACKGROUND - THE LAW PRIOR TO MICHELIN

In the earliest years of our country it was common practice for the economically powerful seaboard states to impose excessive discriminatory taxes on imported goods that merely passed through its ports on their way to inland destinations.

> "As to commercial advantages, few subjects were viewed with deeper interest, or excited more irritation than the manner in which the several States exercised; or seemed disposed to exercise, the power of laying duties on imports."[4]

The geographically favored states could extort a large portion of revenues which were needed for states and local services. This was at the expense of those states who lacked great seaports. The practice of discriminatory taxation severely hampered commerce, and the development and settlement of our nation's heartland; it was a source of conflict among the several States that required a remedy.

The "Framers of the Constitution" sought to alleviate these problems by enacting the Import-Export Clause:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws; and the net Product of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and control of the Congress."[5]

The exclusive power provision of the Clause would give the Federal Government substantial revenues as well as giving the young nation one unified and powerful voice when regulating commerce with foreign nations.

Chief Justice Marshall's opinion in *Brown,v. Maryland*[6] set forth criteria by which future courts were to interpret the extent and scope of the Import-Export Clause. There the Court held that a license required of all importers by the State was really a tax upon the article imported and consequently within the prohibition of the Clause.[7] The Chief Justice went further in dicta statements, to delineate when an imported good would lose its immunity and be subject to State taxation. He said,

"when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form of package in which it was imported, a tax upon it is tax plainly a duty on imports to escape,the prohibition in the constitution."[8]

This became known as the "Original Package Doctrine" and would serve as the cornerstone for determining the "point of time when the prohibition (of the Import-Export Clause) ceases, and the power of the State to tax commenses."[9]

Although the Import-Export Clause and the opinion of the Chief Justice in *Brown v. Maryland*[10] were clearly aimed at discriminatory taxes on imports, the Court in *Low v. Austin*[11] held that even a non-discriminatory ad valorem property tax was within the zone of prohibition. *Low* involved a California non-distriminatory ad valorem property tax on wine imported from France and stored in their original cases in a San Francisco warehouse. The opinion delivered by Justice Field, contained little independent analysis.[12] It relied almost totally on Chief Justice Marshall's dicta statements from *Brown v. Maryland* and excerpts from Chief Justice Taney's opinion in the *License Cases*.[13] Justice Field stated that as long as the imports retain their "character as imports, a tax upon them, in any shape, is within the constitutional prohibition."[14] He further added that "the question is not as to the extent of the tax, or its equality with respect to taxes on other property, but as to the power of the State to levy *any tax*."[15] The imported wines thus escaped State taxation of even a non-discriminatory type as long as they retained their "character as imports."[16]

The *Low v. Austin* decision has been routinely applied by the courts for over one hundred years with respect to goods imported for resale.[17] However, because of the difficulty in applying the "Original Package Doctrine" on goods used in manufacturing, a new test was devised in the jointly decided cases of *Youngstown Sheet & Tube Co. v. Bowers* and *United States Plywood Corp. v. City of Algoma*.[18]

Until the *Michelin* decison, the only instance in which a non-discriminatory ad valorem state property tax[19] on imports could be assessed was where the goods were:

(1) Imported from another state (i.e., domestically produced goods. A state could tax *even* if the goods were still in the original package no matter what its future use.[20]

(2) Imported from a foreign country for use in manufacturing . . . A state

could tax the goods *only* if the goods had to become irrevocably committed to the manufacturing process - - (determined primarily by the Current Operational Needs test from *Youngstown and United States Plywood).*[21]

(3) Imported from a foreign country for resale. A state could tax the item *only* if it lost is distinctive character as an import utilizing the Original Package Test from *Brown v. Maryland.*[22]

Imported goods were actually accorded preferential treatment over domestic goods. The ability of a state to assess a non-discriminatory ad valorem tax was dependent upon the origin or use of the goods.

## III. THE CASE

Michelin Tire Corporation is an importer and wholesaler of automobile and truck tires and tubes. Michelin Tire operates a warehouse in Gwinnett County, Georgia from which it distributes its inventory of imported and domestically produced tires and tubes to 250-300 franchised dealers in six southeastern states.

The Tax Commissioner and Tax Assessors of Gwinnett County levied a non-discriminatory ad valorem property tax on the imported tires and tubes stored in the warehouse. The primary issue raised in the lower courts dealt with the "Original Package Doctrine"; and what is the "package" and when is the "package" broken so as to eliminate the immunity to the ad valorem tax. Michelin Tire claimed that with the exception of certain tubes that had been removed from the original shipping cartons, the ad valorem property tax assessed against its inventory of imported tires and tubes was prohibited by the Import-Export Clause.[23] The Supreme Court of Georgia agreed that the tubes in the large shipping boxes (original packages) were immune but that the tires had lost their status as imports and had become subject to the tax because they had been mingled with other tires imported in bulk, sorted and arranged for sale to the Michelin Tire outlets.[24]

The United States Supreme Court found, however, that the basis upon which the "Original Package Doctrine" relied was faulty. It held that the Court in *Brown* did not include non-discriminatory ad valorem property taxes among prohibited imposts and duties. The *Michelin* Court stated,

> . . . that a non-discriminatory ad valorem property tax is not the type of state exaction which the Framers of the Constitution or the Court in *Brown* had in mind as being an "impost" or "duty" and that *Low v. Austin's* reliance upon the *Brown* dictum to reach the contrary conclusion was misplaced.[25]

Therefore, the immunity provided by the "original package" concept no longer provides a shield for imported goods from the assessment of a non-discriminatory ad valorem property tax.

## IV. EFFECT OF THE MICHELIN DECISION

What remains of the Original Package Doctrine as first formulated in *Brown v. Maryland* is diminished if not extinguished. After *Michelin* the "form" of the import (original package or not) is irrele-

vant. A state can now tax the goods imported from foreign countries if two conditions are met. They are:

(1) The goods are no longer in transit. The tax cannot intercept the import as it is on its way to become incorporated with the general mass of property. The goods are not merely being transported through the State when the tax is assessed. Even a non-discriminatory tax cannot be levied on goods in transit.[26]

and

(2) The ad valorem property tax must not be discriminatory in its application. Such a tax does not fall on imports because of their place of origin or their character as imports.[27]

## V. CONCLUSION

In overruling *Low v. Austin,* the Court went far beyond the question that was posed before it. The *Michelin* Court could have simply found that the tires had lost their character as imports as soon as the "original package" was broken and hence their immunity to non-discriminatory taxation.[28] Without addressing the question that the goods had lost their character as imports, the Court penetrated the vital issue - - Is *every* State tax on imports, which are still in their original package, prohibited by the Import-Export Clause? By answering this question in the negative the states have been granted an additional source of revenue. The ad valorem tax can now be applied to a heretofore immune class of goods. Those who will most feel the impact are businesses who deal extensively in imported goods and merchandise in a wholesaler /distributor or retail capacity. Goods imported will now bear their fair share of state and municipal services provided. No longer will imported merchandise be subsidized by domestically produced goods or by the local taxpayer. A long standing discrimination against domestic goods has been eliminated.

Kenneth H. Zezulka

## RESEARCH BIBLIOGRAPHY


1. 423 U.S. 276, 96 S. Ct. 535 (1976).
2. Ad valorem - - a tax or duty upon the value of the article or thing subject to taxation. Arthur v. Johnson, 185 S.C. 324, 194 S.E. 151, 154 (1937).
3. U.S. const. art. I. § 10.
4. *Brown v. Maryland,* 25 U.S. (12 Wheat.) 419, 438 (1827).
5. U.S. Const. art. I, § 10.
6. 25 U.S. (12 Wheat.) 419 (1827).
7. *Id.* at 436, 441-42.
8. *Id.* at 441-42.
9. *Id.* at 441.
10. 25 U.S. (12 Wheat.) 419, 436, (1827).
11. 80 U.S. (13 Wall.) 29 (1872).
12. *Id.* at 32.
13. License Cases, 46 U.S. (5 How.) 504, 573, (1847).
14. *Low v. Austin,* 80 U.S. (13 Wall.) at 34.
15. *Id.* (emphasis added).
16. *Id.* at 34-35.
17. *See, e.g., Wilson v. County of Wake,* 19 N.C. App. 536, 199 S.E.2d 665 (1973); *Department of Revenue v. James Beam Distilling Co.,* 377 U.S. 341 (1964).
18. 358 U.S. 534, 548-49 (1959). Where the Court held that goods imported for use in manufacturing may be subject to state taxation even though not removed from the "original package." "Breaking the original package is only *one* of the ways by which packaged goods that have been *imported for use in manufacturing* may lose their distinctive character as imports. Another way is by putting them *"to the use for which they (were) imported."* (Emphasis added)
19. *See, e.g., Department of Revenue v. James Beam Distilling Co.,* 377 U.S. 341 (1964). The Court rejected the assessment of a discriminatory state ad valorem property tax on imported whiskey. A discriminatory state tax levied upon imported goods as a distinct class is exactly the kind of tax prohibited by the Import-Export Clause.
20. *Woodruff v. Parham,* 75 U.S. (8 Wall.) 123 (1868). Here the Court upheld a sales tax on merchandise imported from sister states by holding that the term "imports" used in the Import-Export Clause solely concerned foreign imports.
21. *Youngstown Sheet & Tube Co. v. Bowers,* 358 U.S. 534 (1959). *See also, In re Publishing Co.,* 281 N.C. 210, 188 S.E.2d 310 (1972).
22. 25 U.S. (12 Wheat.) 419 (1827). *See also, Low v. Austin,* 80 U.S. (13 Wall.) 29 (1872); *Wilson v. County of Wake,* 19 N.C. App. 536, 199 S.E.2d 665 (1973).
23. *Michelin Tire Corp. v. Wages,* 423, U.S. 276, 282, 96 S. Ct. 535, 539 (1976).
24. *Wages v. Michelin Tire Corp.,* 233 Ga. 712, 214 S.E.2d 349 (1975).
25. 423 U.S. 276, 283, 96 S. Ct. 535, 538.
26. 426, U.S. at 290, 96 S. Ct. at 543.
27. 426 U.S. at 286-88, 96 S. Ct. at 541-42.
28. 426 U.S. at 302, 96 S. Ct. at 548, (concurring opinion).

# CONTROVERSY

***Editor's note:*** *On November 2, 1976, four states placed deposit requirement laws before their voters. Maine and Michigan voters approved the ban on throw-away bottles, while similar proposals were defeated in Massachusetts and Colorado. The North Carolina General Assembly, at its next session, will consider a bill requiring a minimum deposit on all beer and soft drink containers.*

## Litter and the Bottle Bill

*William L. MacDowell**

The litter problem in this country seems like the weather, everybody complains about it but nobody ever does anything. That, of course, is not true. Nearly all property owners, public and private, must spend some of their time and resources picking up litter and disposing of it properly. Nationally each year, some 500 million dollars are spent by federal, state and local governments for litter collection along the roadsides.[1] It is evident everywhere that these efforts are not keeping pace with the actions of a careless or callous littering public. What is most frustrating is that litter is theoretically very simple and inexpensive to stop. Its total elimination should not cost any jobs or lower our standard of living. The rub, unfortunately, is that the solution depends entirely on the cooperation of *every* human being, and the human species is not noted for such consistency.

In practical terms, what can be done about this litter blight that has come to infect nearly every area of the country? There are basically three approaches. First and most obvious, we can try to change people's behavior to prevent their littering. Keep America Beautiful, which is sponsored primarily by beverage-related industries, has taken the behavior modification approach in its educational and advertising programs. Anti-littering laws operate on the,same principle. Second, we can concentrate on making litter collection as effective and frequent as possible. Obviously, to clean up the present litter and maintain a litter-free environment through collection alone would require a considerably greater annual expenditure in public and private funds than is presently being allocated for this purpose. Third, we can reduce the use of those things most often littered. An extraordinarily thorough litter study done for the California State Assembly last year found the pull-tops from beverage cans to be the single item most littered. On a strictly piece-count basis, which does not take into account such factors as item size, visibility, degradability, or potential for injury, the eight product categories contributing most to litter looked like this:[2]

| | % of Total Litter |
|---|---|
| Candy, Gum, Ice Cream, Nuts, Cookies, etc. | 16.56 |
| Pull-Tops | 10.95 |
| Cigarettes, Cigars, Matches, Tobacco, etc. | 10.07 |
| Cups, Lids, and Straws | 7.91 |
| Beer Cans, Bottles, Crowns, Carriers | 6.99 |
| Napkins, Facial & Toilet Tissue, Paper Towels | 5.56 |
| Metal Cans, Foil, and Other | 4.13 |
| Forms, Tags, Instructions, Bills, Stationery Supplies | 4.11 |
| Soft Drink Cans, Bottles, Crowns, Carriers | 4.05 |

---

*Mr. William MacDowell is a graduate student in Environmental Management at the University of North Carolina at Chapel Hill.

We can see that if one was going to reduce the use of some product contributing substantially to litter, the clear choice would be beer and soft drink containers and their related materials since they constitute by piece-count about 22% of total litter. Oregon has sought to do this through its "Bottle Bill" which has become a proposed model for other states including North Carolina. Simply speaking, it does two things: (1) it places a minimum refund value on all beer and soft drink containers (including cans) to encourage their return and reuse or recycling, and (2) it prohibits the pull-top. Despite the controversy about this legislation, there is little disagreement that it has accomplished its main objective: it has reduced the beverage container portion of litter (by about 80%).[3]

The solution to the litter problem will require a combined strategy using all three approaches mentioned: (1) behavior modification, (2) increased litter pick-up, and (3) the reduction in use of those things most littered (chiefly throwaway packaging). Keep America Beautiful deserves credit for its generally fine educational work aimed at reducing littering behavior. It is unfortunate, however, that KAB has attempted to obstruct progress toward beverage-container waste reduction. Within the last several years the Garden Clubs of America, the National Wildlife Federation, the U.S. Environmental Protection Agency and other organizations have resigned from KAB's advisory board in protest over its anti-bottle-bill activities. Yet, despite its official neutrality on the issue, KAB continues to largely represent the interests of the beverage and beverage-related industries.

Increased litter pick-up is costly and will probably require a special litter tax of some kind. The California study recommends taxing products at the wholesale level at a rate proportional to their contribution to total litter. It goes on to point out that this plan does not conflict with the minimum deposit approach to container control.[4]

Like all waste reduction measures, beverage container control through minimum deposit legislation has significant secondary benefits. By reducing the quantity of single-use beer and soft drink packaging, it reduces the burden on our solid waste collection and disposal operations and extends the average life of a sanitary landfill. I have estimated that savings on solid waste operations for North Carolina would be about 1.4 million dollars if 80% of soft drinks and 90% of beer was sold in refillable bottles. Refillable bottles also save raw materials and energy. While the materials savings is readily apparent and important, it is perhaps more significant that refillable bottles used over nine times save more energy than any throwaway container options, even assuming a 90% rate of recycling.[5] A just-released study (760 pages) done by the Research Triangle Institute for the Federal Energy Administration calculated that a national bottle bill would probably reduce this country's oil consumption by at least 70,000 barrels a day. This is based on the more conservative of the two consumer-response scenarios emphasized in the study. For that scenario, RTI also concluded that job losses would occur in container and metals manufacturing, but that over three times as many jobs would be gained in the handling and hauling of bottles for beverage producers, distributors and retailers. While the new jobs would be lower-paying generally, the net increases in labor earnings for 1982 would amount to nearly 1 billion dollars.[6] An extensive report published in 1975 by the North Carolina Public Interest Research Group estimated a net gain of over 600 jobs following state legislation, and this did not take into account the new Miller's brewery being built in Eden, North Carolina, whose demand for bottles should more than offset the losses to glass manufacturing.[7] For the beverage manufacturers, the franchise bottlers and regional brewers would benefit because refillables favor short-haul distribution nets. In North Carolina, Joseph Schlitz and Miller Brewing Co., while

nationals, would be at a competitive advantage in the state due to their local plants.

The sticking point seems to be the capital outlay and conversion costs involved in a return to refillables. The best answer lies in delaying implementation of the minimum deposit law for several years from the date of its passage. For North Carolina, where 50% of soft drinks are already in refillables, the conversion costs will not be as great as elsewhere and a one-year delay should suffice.

Finally, the bottle bill's impact on beverage prices, sales and tax revenue is important to consider. Consumer prices for soft drinks are up to 40% cheaper in refillables at present in North Carolina. It is expected that after the state law went into effect, beer and soft drink prices would continue to be lower for refillables than for single-use containers. However, increased handling and distribution costs may increase the prices for refillables above their present levels.

There is some indication from the Oregon experience that a reduction in the sales *growth* rate for beer and soft drinks may occur. How long this leveling-off tendency might persist and how much it could be attributed to container legislation is uncertain. Beer sales suggest the phenomenon is temporary. Oregon's packaged beer sales for 1973 were down 0.9% from the previous year (total sales were up 1.2%), but for 1974 packaged sales were up 6.5% over 1973 (total sales up 6.2%).[8] There is absolutely no evidence then from Oregon that tax revenue from beverage sales would decline below present levels as some have charged.

Beer sales in Vermont did decline about 10% during the first year of the law (1973-74), but this coincided with declines in sales of cigarettes and hard liquor - an apparent reflection of the economy.[9] Still, there is no question that Vermont's deposit law, which is different from Oregon's, has had growing pains. Many feel that Vermont's legislation was badly designed since it did not provide a real economic incentive to brewers and bottlers to use refillables instead of throwaways. Amendments to improve the law have been passed, however, and public support remains strong.

From coast to mountains, North Carolina is a state of remarkable scenic beauty. But the litter that lies along its roadsides and beaches, and collects in its parks and forests threatens the complete enjoyment of that beauty by residents and visitors alike. North Carolina needs an aggressive litter abatement program, including minimum deposit legislation. A combined strategy aimed at the litter itself, the person littering and the things most littered is the best approach.

## REFERENCES


1. Federal Highway Administration, *Report on the Study of Highway Litter, with Recommendations* (Washington, D.C., 1974), p. VII.
2. Syrek, Daniel B., *California Litter: A Comprehensive Analysis and Plan for Abatement* (Institute for Applied Research, Carmichael, California, 1975), p. 51.
3. Waggoner, Don, *Oregon's Bottle Bill Two Years Later* (Oregon Environmental Council, Portland, Oregon, May, 1975), p.7. (Litter determination based on piece count rather than volumn county.)
4. Syrek, pp. 161-165.
5. Hunt, R.G. and W.E. Franklin, *Resource and Environmental Profile Analysis of Nine Beverage Container Alternatives* (Midwest Research Institute, 1974), pp. 40-42.
6. Bingham, T.H., Lee, B.S., Mulligan, P.F., Cooley, P.C., *Energy and Economic Impacts of Mandatory Deposits*, Executive Summary (Research Triangle Institute, 1976), p. 13.
7. Boyd, S.D. and F.E. WIlliams, *The Throwaway Container - No Return for North Carolina* (North Carolina Public Interest Research Group, 1975), p. 48.
8. U.S. Brewers Association, *Brewers Almanac, 1974*, p. 77. *Brewers Almanac, 1975*, p. 77.
9. Loube, Michael, *Beverage Containers: The Vermont Experience* (U.S. Environmental Protection Agency, 1975) pp. 15-16. Also: Franchot, Peter, "The Vermont Story," *Environmental Action*, July 19, 1975, p. 7.

# Restrictive Beverage Container Legislation

*Henry B. King**

Litter reduction, solid waste management, energy conservation and resource recovery are certainly national goals we all seek. I think all Americans are environmentalists at heart. We differ only about the methods to achieve these goals.

Supporters of restrictions on beer and soft drink containers promote them as ways to reduce litter and solid waste, with energy savings as a possible added benefit. But are they? All we can be sure of is that such restrictions would be costly - - in loss of skilled jobs, higher consumer costs, loss of tax revenues and highly expensive business disruption. These real costs far outweigh any modest potential benefits.

I believe that real solutions are available for litter and solid waste. A highly successful community action program already shows a very significant reduction in litter without resulting in serious costs to the community, consumer, or industry. Resource recovery will answer the larger problem of solid waste management and true energy savings.

These are positive approaches for our nation. They represent efficient, cost-effective solutions. Restrictive container legislation is a backward step that would not solve the,litter, solid waste, and energy problems. Resource recovery and precision litter management, on the other hand, can benefit everyone - - government, labor, industry, and the general public.

Since 1970, more than 1,000 pieces of legislation have been introduced to require a mandatory deposit or a tax on beer and soft drink containers or to ban particular types of containers. Only Oregon and Vermont have such laws in effect. (South Dakota passed a law to go into effect July 1978 requiring beverage containers to be reusable, bio-degradable or recyclable.)

*Mr. Henry King is president of United States Brewers Association, Inc.

The mandatory deposit in Oregon was supposed to reduce litter by 90 percent. However, beverage containers account for only about 20 percent of all litter.[1] After the first year of Oregon's forced deposit legislation, the official state study[2] showed that:

1. While beverage-related litter declined by about 65 percent, overall litter was down only 11 percent.
2. 3.6 returnable beer bottles per case (one in every seven bottles sold) were still being discarded. Residents of Oregon forfeited deposits amounting to approximately $1.5 million.
3. Cost of litter control did not decrease. In fact, state costs rose from $579,000 before the law to $625,000 after.
4. Beer sales, which had been growing at the rate of 6 percent a year, remained virtually constant in the year after the law was enacted with a consequent loss of predicted excise tax revenue.

In Vermont, package beer sales dropped 15 percent in the first year after a deposit law took effect, and retail premium beer prices increased an average of 15 cents per six-pack.[3] An additional 30 cents was required to cover the mandatory deposit. The state's loss on beer tax alone was over $340,000 at the end of the law's first year.

It is impossible to predict results of restrictive container legislation. The effects depend on the form of the law, on whether it is applied on a national, state or local basis, on the number of times containers are returned, on consumer response, and on many other variables. Despite these uncertainties, it is possible to make reasonable predictions of the general results of laws forcing the use of returnable bottles.

A Department of Commerce study[4] projects a loss of about 80,000 skilled jobs if a national container law results in reverting to an all-returnable system. I. W. Abel, President of the United Steel Workers of America, estimates that such action would jeopardize some 60,000 jobs in the steel,

aluminum, and can manufacturing,industries alone.

Although new jobs would be created for a possible overall net gain, many would be in unskilled, low-paying categories, such as sorting bottles, resulting in an overall net loss of income.

Studies of the cost of packaging and distributing beer in different containers indicate that returnable bottles do not cover their share of the total system costs, so they are actually being subsidized by cans and non-returnable bottles.[5] The steady loss of popularity over the years of returnable beer packaging has acted to keep its price at a lower level.

Competition among containers - - glass, steel, aluminum - - has helped keep beer prices from rising as fast as have other food prices. For example, since 1967 prices for non-returnable beer bottles rose about 59 percent whereas other food containers jumped over 80 percent.[6] Elimination of competition among packages would stifle innovation and freeze technology for developing better and cheaper packaging.

By making its products available in steel and aluminum cans, one-way and returnable bottles of a variety of sizes, the brewing industry has offered the consumer a range of choices available in few other products. In addition, the lightweight non-returnable package has made it feasible to ship beer great distances, expanding the variety of brands available in many markets.

Both these choices - - of brand and of package - - are severely limited by an all-returnable system. Imported brands in particular would be likely to decline in availability.

Deposit laws have had an adverse impact on beer sales in Vermont and Oregon.[7] Such sales loss not only would further hurt employment in the industry, but it would reduce the beer excise tax revenues depended upon by many states for a major part of their revenues.

North Carolina has the second highest beer state excise tax in the nation ($1.20 per case) and collects approximately $40 million annually from this source. It has a 1 cent per container excise tax on soft drinks which produces approximately $30 million on the sale of beer and soft drinks.[8]

An Oregon-type law could cost North Carolina $9 million in revenue losses. This is an unreasonable price for the State of North Carolina to pay for approximately 10.6 percent reduction in total litter, especially when considering the same result can be achieved through voluntary efforts.

Energy used for manufacturing, filling and distributing non-returnable containers of beer and soft drinks amounts to less than one-half of 1 percent of the nation's total energy requirements.[9]

Although most calculations indicates that returnable bottles use less total energy (if they are returned at a sufficiently high rate) than do non-returnable containers, returnables use more energy in filling and distributing the beverages.

Energy saved by not making the non-returnable package - - in a returnable bottle only system - - would be offset by:

1. Increased use of critical gasoline for the additonal (30 percent or greater) beer truck fleet required for transporting the bulkier containers.
2. Higher energy needed to wash the significantly greater number of bottles returned at the brewery (and the corresponding increase of cleaning materials entering the waste stream).

Energy savings claims are usually based on the assumption of 10 or more trips for a returnable bottle. This is considered highly optimistic. In Oregon, returnable beer bottles were returned not more than 7 times. In urban areas, the low rate would see any energy savings disappear.[10]

About six percent of total municipal solid waste is represented by beer and soft drink containers.[11] This six percent can be reclaimed through resource recovery. Forced deposits do not address the remaining 94 percent.

Solid waste could actually increase in an

all-returnable system due to the weight of the refillable bottle and the need for heavier cases and paperboard packaging.

Thus, deposit legislation would change the mix of solid waste, but not necessarily reduce and could increase the overall amount. On the other hand, much of the steel and aluminum recoverable in reclamation would be eliminated, reducing the income from sales in a recovery system.

National surveys show beer and soft drink cans and bottles to be less than 20 percent of litter.[12] At best, the other 80 percent of litter would be completely unaffected by the restrictive legislation.

The United States Brewers Association and its members have strongly supported community anti-litter programs. These programs, such as Pitch-In, bring community involvement to litter education and are aimed at changing habits to reduce litter.

The Clean Community System (formerly known as the Action Research Model) has achieved litter item count reductions of 70 percent or better in the three cities selected as original test sites. Charlotte was one of the three. Moreover, this was accomplished with little cost to local government or citizens. It recognizes that litter stems from seven basic sources: household refuse, uncovered trucks, commercial refuse, construction sites, loading and unloading platforms, and the pedestrians and motorists who are usually blamed for most of litter.

The Clean Community System is a program utilizing updated ordinances, modern technology, streamlined enforcement and education. It is a tested approach involving the total community - - government, industry and private citizens. The System is now being implemented in many other communities because it works. It doesn't legislate against a type of container but gets to the cause of litter and recognizes that litter reduction is attainable.

Resource recovery can transform much of the waste into productive raw materials. Glass to make new glass or construction material . . . metals to make new metal . . . paper to make new paper . . . fuel to make steam for heat or to generate electricity . . . raw materials to make compost to be converted into activated charcoal or crude industrial heating oil. That's resource recovery and reuse.

Even the most optimistic calculations show that at least $5 billion would be required to convert to an all-returnable beverage container system. On the other hand, $5 billion dollars invested in resource energy would provide far more energy savings. For example, a dollar spent on resource recovery has been estimated to be 7.7 times more energy saving than a dollar spent to convert to an all-returnable system.[13]

## REFERENCES


1. Research Triangle Institute (R.T.I.), 1969, A National Study of Roadside Litter, prepared by Keep America Beautiful, Inc.
2. Study of the Effectiveness and Impact of the Oregon Minimum Deposit Law, Applied Decision System (ADS), October, 1974.
3. Report of the Vermont Beverage Deposit Law Review and Analysis - - Vermont Retail Grocers Association.
4. The Impact of National Beverage Container Legislation, Bureau of Domestic Commerce Staff Study, #A-01-75, October, 1975.
5. R.S. Weinberg, The Effect of Convenience Packaging on the Malt Beverage Industry, 1947-1969, 1971.
6. United States Department of Labor, Bureau of Labor Statistics.
7. ADS and Report of the Vermont Beverage Deposit Law Review and Analysis.
8. Statement of Robert S. Hopson, Director of Public Works, City of Charlotte, N.C., January 31, 1975.
9. Illinois Pollution Control Board Hearings, Report No. R71-24 ("Memorandum in Opposition to the Proposed Regulation").
10. ADS Report.
11. Hearings Before the Subcommittee on the Environment of the Committee on Commerce United State Senate, S1377 & S3058, March 6, 10, & 13, 1972.
12. R.T.I. Study.
13. R.S. Weinberg & Associates.

# ALUMNI NEWS

## Holiday in Britain

*Leon Corbett, Jr.* and*
*Jean T. Wilson***

In June a group of twenty alumni and friends of Wake Forest Law School took the "first annual law school tour". There could be no better place to begin than England - - the source of our legal system.

The tour began with five days in London spent exploring the Tower of London, museums, the Houses of Parliament, Old Bailey, the Inns of Court, art galleries and theaters. Sam Johnson sought out the home of Samuel Johnson, of course. Side trips included Windsor Castle, Stonehenge, Dover, Canterbury and other sites in Southern England.

The chartered "coach" left London on June 11, for an eight day swing through Northern England and Scotland. The first day's travel took the group to Bladen Church and Blenheim Castel - famous in the life of Winston Churchill. Addison Hewlett stood by Churchill's grave and declared that he was on hallowed ground. The next stop included a stroll through Oxford and the colleges with a heart stopping climb to the top of the tower at Carfax, all that remains of St. Martin's Church, the original building at Oxford. The first night's stop was Stratford-Upon-Avon, and the Royal Shakespeare Company performing *The Winter's Tale* was a treasured experience.

After a stop at Windermere in the Cumbrian Mountains, the coach threaded its way into the hills of Scotland and the destination of Edinburgh. This stop provided another chance to visit courts and castles and participate in a Scottish banquet. Tam-o'shanters appeared on the heads of Cliff Everett, Lonnie Williams, Ken Etheridge, Addison Hewlett and Jim Wilson.

The northernmost point on the trip was St. Andrews, Scotland, where the group stayed in an old hotel overlooking the golf course. Several of the group played the course while others toured the historic town. Points of interest included the University of St. Andrews and ruins of a castle where John Knox was taken prisoner by the French.

A fast trip down the east coast brought the group back to London. Enroute visits included: Abbotsford, home of Sir Walter Scott; Chester's Fort, a part of Hadrian's wall; York and York Minister, established A.D. 627; and Cambridge busy with students, many of them American. The group enjoyed a last country lunch at Elkesly Pub in Sherwood Forest and met the village vicar one of whose predecessors. "popped off to fight William" - (the Conqueror).

One more night in London gave some of the group a chance to see Julie Andrews at the Palladium while the rest of the group had dinner at Trader Vics. The final day permitted one last look at the city and gave Jim Mason a chance to help in the search for the house which the University has purchased in London.

The second annual Alumni trip is now being planned. The destination of the tour is yet undecided. The choices are an 8 day-7 night Carribean cruise. Ports include Puerto Plata, San Juan and St. Thomas. The cost of the cruise is approximately $590 per person, leaving from Greensboro.

The second choice is a 15 day-14 night tour of Italy, including the cities of Florence, Venice, Rome, Sorrento and Capri. The trip leaves from Greensboro and the price is approximately $1,000 per person.

If anyone would like further information concerning the trips or would like to state their preference, please contact Assistant Dean Herring, Wake Forest School of Law, Winston-Salem, N. C. 27109.

---

*Professor of Law and official escort for the Law Alumni Tour.
**Law School Director of Admissions

## The *JURIST* Looks Back . . .

Since nostalgia seems to be the craze these days the *Jurist* has decided to include a new section featuring photographs and memorabilia from the long and illustrious tradition of the Wake Forest University School of Law and its students. To achieve this purpose, and to make it more meaningful to our readers, we wish to solicit photographs that you feel would be of interest to other *Jurist* readers.

Photographs can be of any size and should contain a short description of the contents (the contributor's return address should appear on the back of the photograph to facilitate return) and should be mailed to Wake Forest Jurist, School of Law, Wake Forest University, Winston-Salem, N. C. 27109.

# CLASS NOTES

1941

**J. Myers Cole** has retired as an FBI Special Agent in Charge in San Antonio, Texas and is currently residing in Charlotte, N. C. After the death of his first wife he remarried June Haines Cole.

1953

**Edward J. Tenney, II** became President of the Sullivan County Bar Association in October, 1976, and expects to be a candidate for the fourth consecutive term as Sullivan County Attorney in November, 1976. His home is in Claremont, New Hampshire. Presently, he is a regional member of the Governor's Crime Commission.

1959

**Koy E. Dawkins** has recently opened a firm under the name of Dawkins and Glass in Monroe, N. C.

1964

**Charles E. Clement** and his wife announce the birth of their daughter, Catherine Elizabeth, born April 10, 1976. He also expects to have a new associate join his firm in August, 1976.

1965

**Donald E. Weir** is presently a military judge with the U.S. Air Force Trial Judiciary. It is his responsibility to preside over trials by court-martial at USAF bases in Japan, Korea, Okinawa and Taiwan. He is married and his wife is also an Air Force Major. They are stationed at Yokota Air Base, Japan.

**Gary A. Davis** is newly associated with the firm of Mraz, Aycock, Casstevens and Davis in Charlotte, N.C.

1966

**George M. Bell** is an attorney with the U.S. Veterans Administration in Washington, D.C. He is recently married to Katherine Wilson Bell, formerly of Winston-Salem, N. C.

**Maurice W. Horne** who is Deputy General Counsel of the N. C. Utilities Commission, has been appointed as Vice Chairman of the National Law Committee of the National Association of Regulatory Utility Commissioners. He has prepared Model Rules of Procedure for consideration by the regulatory utility commissions in all states. He and his wife, Glenda, and their two sons make their home in Raleigh, N. C.

1968

**Carroll H. Leggett** is now serving as Administrative Assistant to U.S. Senator Robert Morgan of North Carolina. He is also on the Board of Trustees at Campbell College.

1969

**Koyt W. Everhart, Jr.** is,currently serving with the Judge Advocate General's Corp of the U.S. Navy and stationed in the Phillipine Islands. He also recently married Tanya Delane Smith Everhart formerly of Kernersville, N.C.

1971

**Donald E. Wynne** is currently corporate counsel for a multi-million dollar bank in Raleigh, N.C.

1972

**Carroll Charles Wall, III** is an associate in the law firm of Wilson and Biesecker in Lexington, N.C. Until 1975 he was an Assistant District Attorney in the 22d Judicial District. He and his wife have two children.

**Franklin B. Johnston** opened his own law office in Washington, N.C. on June 2, 1975. A son was born to him and his wife

on March 11, 1976, joining two daughters and completing the Johnston family.

**Robert W. Schivera** was previously with the U.S. Army Judge Advocate General's Corps. Upon completion of Army active duty he has joined the law firm of Lee and Clark in Savannah, Georgia.

### 1973

**R. F. Landis, II** formerly an associate, has become a partner in the firm of Wallace, Langley, Barwick, Llewellyn and Landis in Kinston, N. C.

### 1975

**James F. Bailey** was appointed Assistant Attorney General and is currently working in the Civil Division of the State Department of Justice in Wilmington, Delaware.

**Henry A. Harkey** has become associated with the firm of Harkey, Faggart, Coira and Fletcher in Charlotte, N.C.

**Michael F. Joseph** has opened a new law office in conjunction with J.C. Barefoot, Jr. They are located in Greensboro, N.C.

**James M. Day** is recently associated with Boyce, Mithcell, Burns and Smith of Raleigh, N.C.

**Julius Alembik** is now associated with the firm of Herman and Ridley in Atlanta, Georgia.

**W. David Lee** is newly associated with the new firm of Dawkins and Glass in Monroe, N.C.

**H. Denton Bumgardner** is associated with James G. Palmer in the general practice of law in Brunswick, Maine.

**Richard W. Gabriel** has opened his own office for practicing law in Greensboro, N.C.

**D. Clark Smith** was recently named a partner in the firm of DeLapp, Hedrick, Harp and Smith located in Lexington, N.C. His wife, Jane, is presently an accountant with the Sea-Land Corporation, a subsidiary of R.J. Reynolds Co.

# HELP!

## We Need Alumni Information

### JURIST ALUMNI INFORMATION FORM

Name: _____ Year Graduated: _____

Home Address: _____

Business Address: _____

Are You A Member Of A Legal Fraternity? _____ If Yes, Specify _____

Are You Engaged In A General Practice of Law? _____

List All Public Office, Professional, and Civic Honors and Activities, With Dates:

_____

_____

_____

_____

Please Give Brief Account Of Personal Items Of Current Interest: (Recently Married, Birth Of A Child, Current Professional Positions, Professional Plans In The Immediate Future, etc.) _____

_____

_____

_____

_____

Remember, too, the *Jurist* needs your nomination for the Outstanding Alumnus.

Return To:
**The Wake Forest Jurist**
**School of Law**
Wake Forest University
Winston-Salem, N. C. 27109

WAKE FOREST JURIST
WAKE FOREST UNIVERSITY
SCHOOL OF LAW
Winston-Salem, N. C. 27109



*1976*